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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,611	02/16/2001	Susan Opalka	4093-PA1	4971

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EXAMINER

SWENSON, BRIAN L

ART UNIT PAPER NUMBER

3618

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,611

Applicant(s)

OPALKA ET AL.

Examiner

Brian Swenson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Acknowledgment is made of the amendment filed on 28 November 2003 and placed in the file as paper number 5 where:

- a. Claims 1-11 have been cancelled;
- b. Claims 14-17 amended;
- c. Claims 18-19 added; and
- d. Claims 11-19 pending in this office action.

Drawings

2. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed. See PTO-948 attached to the office action mailed on 28 August 2003 for details.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12, 14-15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,339,853 issued to Sokolis et al. in view of McDonald.

Sokolis et al. teach of an ambulatory aid for supporting an individual and aiding in ambulation including a frame work (walker embodiment 13 shown in Figure 3-9; cane

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embodiment (11) shown in Figure 1) with attached forward and rearward legs having upper ends, lower ends, handled structure attached to the upper and lower ends and feet (15) attached to the one of the lower ends. The cane embodiment shown in Figure 1 has a handle (16) angled toward the footed end (15). Sokolis et al. also teach of attaching a transparent window (19) to the hollow leg of the walker embodiment (23).

Sokolis et al. do not teach of filling the hollow leg with items.

McDonald teaches in Figures 1-12 and respective portions of the specification of an cane (Col. 3, line 65) with a framework having at least one transparent window (20; Col. 6, line 42), opposing footed (22) and handled (see at least Figure 1, where it is shown the handle is angled toward the footed end) ends and the ambulatory device is filled with loose decorative filling (golf balls) which are visible through the transparent housing, as shown in Figure 1

It would have been obvious to one having ordinary skill in the art at the time of invention to fill the rear legs in the ambulatory apparatus, as taught by Sokolis et al. with decorative elements as taught by McDonald and to include the transparent window (19) on the rear legs in the same manner as the front legs. One would be motivated to fill rear the hollow legs with decorative elements to allow the user of the ambulatory aid to hold items to be transported and to view the contents through the transparent window.

4. Claims 13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sokolis et al. in view of McDonald and further in view of U.S. Patent No. 6,318,392 issued to Chen.

Sokolis et al. as modified by McDonald, as disclosed above in reference to claims 12, 14 and 15, discloses the claimed invention except for providing wheels at the footed end and including a transparent receptacle or storage bin.

Wheeled footed ends are well known in the ambulatory art. Chen teaches of a wheeled ambulatory aid with wheels (11) attached to the footed ends and also teaches of attaching a wire storage bin (40) to the frame work. It would have been obvious to one having ordinary skill in the art at the time of invention to include wheels and at the footed ends and an attached storage bin, as taught by Chen, in the invention taught by Sokolis et al. as modified by McDonald. One would be motivated to include wheels to allow the user to push the ambulatory aid and to attach a storage bin to allow the user to carry items. Additionally, the storage bin taught by Chen is of wire construction, which allows the contents to be viewed. It would have been obvious to one having ordinary skill in the art at the time of invention to make the storage bin out of transparent plastic, such as the transparent plastic taught by McDonald, to allow the storage bin to carry small items.

Response to Arguments

Applicant's arguments filed 28 November 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references and that the combination of the references is improper, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some

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teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, modifying Sokolis to include "decorative filler" would not render Sokolis inoperable for the intended purpose of illumination. What constitutes "decorative filler" is subjective. McDonald teaches that it is known in the art of storing items within the tubing of a cane. Positioning illuminating golf balls, which are well known in the art, within the ambulatory aid taught by Sokolis by the method taught by McDonald. The illuminating golf balls would be "decorative filler" and be within Sokolis's objective of providing illumination and would not render Sokolis inoperable.

In response to applicant's argument that the combination of Sokolis and McDonald is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Sokolis teaches of an ambulatory aid in Figure 1 that is cane shaped. McDonald teaches of a storage device, in Figure 1 that is disclosed to be a cane (Col. 3, line 65).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,927,015 issued to Jones teaches of a well-known illumination golf ball.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (703) 305-8163. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



bls

Brian Swenson
Examiner
Art Unit 3618



BRIAN L. JOHNSON
SUPERVISORY PATENT EXAMINER
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2/5/04